



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774-3528

OR95-1319

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 36082 (formerly ID# 17181 and RQ-561).

In August 1992, the Comptroller of Public Accounts received an open records request for the policy memorandum file on prior contract exemptions. This office eventually addressed the availability of the requested information in Open Records Decision No. 624 (1994). However, this office withdrew its opinion in Open Records Decision No. 624 (1994) after the comptroller's office was sued regarding a portion of the information addressed in the opinion. *See A&T Consultants, Inc., v. Sharp*, 904 S.W.2d 688 (Tex. 1995). On September 14, 1994, the Texas Supreme Court overruled a motion for rehearing in the lawsuit and, thus, ended the litigation. The court's opinion, however, did not resolve the question of the availability of the memorandum file on prior contract exemptions. Therefore, no decision exists regarding this matter, and you have asked this office to render a decision.

You now contend that sections 552.101, 552.103, and 552.111 of the Government Code except the requested information from required public disclosure. In your previous request for a decision from this office, you raised the predecessor to sections 552.101 and 552.111. Since that time, a lawsuit has been filed against the comptroller's office, and you contend that the requested information relates to that lawsuit.

We agree that section 552.103(a) excepts from disclosure the information requested in this case. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or

reasonably anticipated judicial or quasi-judicial proceeding to which the state or political subdivision is or will be a party. Open Records Decision No. 551 (1990) at 5. In this case, you indicate that the comptroller's current position regarding prior contract exemptions has been challenged. The information you submitted for review clearly relates to this litigation. Therefore, you may withhold the information you submitted for review under section 552.103(a).

Even though we conclude that you may withhold all the information submitted for review under section 552.103, you also ask us to opine on whether any portion of the information may be withheld under section 552.101 or section 552.111. We decline to do so at this time. Section 552.306 of the Government Code only requires this office to determine whether particular information is public or falls within one of the exceptions to disclosure. In this case, we have fulfilled our responsibility; we have determined that the information you submitted for review falls within the exception to disclosure contained in section 552.103 of the Government Code. If you receive another request for this same information after the litigation is over, please submit another request for an opinion. Otherwise, you may withhold the information under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

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Ref.: ID# 36082

Enclosures: Submitted documents

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